



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



Andre Lemieux  
10 Coopers Grove Rd.  
Kingston, NH 03848

Re: Wetlands Bureau File 1996-2125

**ADMINISTRATIVE ORDER**  
**No. 04-002**

February 10, 2004

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Andre Lemieux pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services ("DES"), Water Division, is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Andre Lemieux is an individual having a mailing address of 10 Coopers Grove Rd Kingston, NH 03848.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. Andre Lemieux is the owner of real property located at 10 Coopers Grove Road in Kingston, NH, more specifically referenced on Kingston Tax Map 17 as Lot 8 (the "Property").
4. On October 21, 1996, DES received reports from the Rockingham County Conservation District indicating that a portion of the wetlands on the Property had been filled without a permit and that such fill included tires, motor vehicle and engine parts, scrap metal, oil cans and demolition debris, and other solid waste.

5. By letter dated November 18, 1996, the DES Wetlands Bureau notified Andre Lemieux that DES received a complaint of a possible violation on the Property. The letter indicated that a wetlands permit is required to be obtained from DES and posted on site in order to excavate, remove, dredge, fill, or construct any structure in or on any bank, flat, marsh, bog, or swamp, in or adjacent to waters of the state. The letter also requested a response to the complaint in writing within 30 days of the date of the letter.

6. As of February 24, 1997, no response was received from Mr. Lemieux.

7. By letter dated February 24, 1997, DES notified Andre Lemieux that it had not received a response to its letter dated November 18, 1996 and the Property would be included on a schedule of site investigations.

8. On July 16, 2003, DES personnel from the Wetlands Bureau, Water Division, inspected the Property with Larry Middeldmiss, Town of Kingston Health Officer, and found:

- a. Approximately 15,000 square feet of wetlands had been filled on the southwest side of the Property;
- b. Of that, approximately 5,600 square feet was recently deposited unstabilized fill consisting of unconsolidated soil, timber, slash, tires, a chair spring, plastic sheeting, metal parts, empty plastic oil bottles, bricks, vinyl siding, old dented open 55-gallon drum containers and concrete;
- c. Approximately 9,400 square feet of the fill was older consisting of sand vegetated with horsetail (*Equisetum*) and red maple (*Acer rubrum*) seedlings; and
- d. During the inspection Larry Middeldmiss indicated that the fill was over a town aquifer.

9. Following the DES inspection on July 16, 2003, Mr. Lemieux called DES. DES Wetlands Bureau personnel explained that a DES inspection that day had found fill in wetlands and possible hazardous wastes including filled 55 gallon drums. Mr. Lemieux explained that he had recent surgery so he had been unable to remove the fill and waste. DES Wetlands Bureau personnel indicated that the waste needed to be stored properly, that personnel from DES Special Investigations ("SIS"), Waste Management Division would contact him, and that the Wetlands Bureau would be detailing findings from the site inspection related to wetland impacts in a letter to him.

10. On July 17, 2003, the DES Wetlands Bureau issued a Letter of Deficiency ("LOD") which indicated that approximately 15,000 square feet of fill had been placed in wetlands. The LOD was sent to Andre Lemieux by certified mail. The LOD requested the following:

"Within 30 days of receipt of this Letter of Deficiency, submit a restoration plan to DES for review. The restoration plan should be prepared by a certified wetland scientist and include provisions for removing any and all fill within wetland areas. The plan should specifically include:

- a. A plan with dimensions, drawn to scale, showing:
  - i. The footprint of the wetlands before disturbance;
  - ii. The footprint of the existing conditions showing the extent of the dredging or filling;

- b. A plan for re-establishing the wetland to its original footprint which includes a schedule and construction sequence listing equipment and methods for accomplishing restoration not later than September 30, 2003.
- c. A detailed description of the proposed means of erosion control and stabilization of the restoration area;
- d. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area;
- e. A proposed monitoring plan, including two restoration progress assessment reports to be filed with DES after a full growing season.
- f. A provision for coordinating with DES Special Investigations Section, Waste Management Division."

11. On July 24, 2003, DES SIS personnel inspected the Property with Larry Middlemiss to determine compliance with solid and waste management regulations. Andre Lemieux was present during the inspection. DES personnel identified, among other things, solid wastes observed along the perimeter of the filled area both on the surface and partially buried.

12. During the July 24, 2003 DES SIS inspection, Mr. Lemieux indicated that he had yet to receive written direction from the Wetlands Bureau. DES SIS personnel advised him "to expect something soon from the Wetlands Bureau and that waste removal should be done in compliance with Wetlands guidelines". Mr. Lemieux requested that a copy of the wetlands LOD be mailed to him.

13. The LOD was claimed by Tina Radigan, Mr. Lemieux's daughter, on August 4, 2003, as evidenced by the signed certified mail receipt.

14. On October 22, 2003, DES sent a letter to Andre Lemieux indicating that the restoration plan requested in the LOD had not been received.

15. On November 6, 2003, DES SIS personnel, inspected the Property and found that no apparent efforts had been made to remove the fill and waste from the wetlands.

16. On November 6, 2003, Tina Radigan called the DES Wetlands Bureau. She indicated that she did not remember receiving the LOD. She stated that her father had removed material but she did not know exactly what was done and requested an extension of time to submit the restoration plan. DES informed her that restoration must be done according to an approved plan and verbally extended the deadline to receive the restoration plan until December 6, 2003. DES faxed a copy of the LOD to Tina Radigan and provided the website address of the New Hampshire Joint Board which lists the certified wetland scientists in New Hampshire.

17. On January 8, 2004, DES SIS personnel inspected the Property and observed that the Property was snow covered and that there was no apparent change since the November 6, 2003 inspection.

18. On January 12, 2004, DES SIS personnel received a telephone call from Andre Lemieux. He stated that he had "hired someone to do testing in the swamp area" and that he expected this person to call DES. Andre Lemieux was unable to tell DES SIS personnel the person's name.

DES SIS personnel advised Andre LeMieux to call Arlene Allen at the DES Wetlands Bureau with the information.

19. To date, the DES Wetlands Bureau has not received information from Andre Lemieux to indicate that he has retained a certified wetland scientist as requested by the LOD of July 17, 2003.

20. To date, DES has not received a restoration plan for the Property.

#### **D. DETERMINATION OF VIOLATIONS**

1. Andre Lemieux has violated RSA-A:3 I by placing approximately 15,000 square feet of fill in a wetland without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Andre Lemieux as follows:

1. **By February 20, 2004** submit evidence to DES that a certified wetland scientist has been retained to develop a restoration plan for the Property in accordance with the guidelines set forth in the LOD dated July 17, 2003.
2. **By April 30, 2004** submit a restoration plan prepared by a certified wetland scientist in accordance with the details outlined in the LOD dated July 17, 2003 to DES for approval.
3. Implement a restoration plan that has been approved and conditioned by DES by July 15, 2004. The first monitoring report documenting that restoration is complete, as detailed in the approved restoration plan, shall be submitted by July 15, 2004.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Arlene Allen, Compliance Specialist  
DES Water Division  
29 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-6588  
e-mail: aallen@des.state.nh.us

#### **F. APPEAL**

Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.

Filing an appeal or motion for reconsideration does not relieve Andre Lemieux of the obligation to comply with the Order.

### G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Andre Lemieux remains obligated to comply with all applicable requirements.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

  
Harry T. Stewart, P.E., Director  
Water Division

  
for Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7002 3150 0001 5411 0084

cc: Gretchen Rule, DES Legal Unit  
Public Information Officer, DES PIP Office  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Larry Middelmis, Kingston Health Officer  
Kingston Conservation Commission  
Kingston Board of Selectmen  
Rockingham County Registry of Deeds